



Upper Columbia River Group

Box 413
Spokane, Washington
99210

509 456-3376
www.idaho.sierraclub.org/uppercol/

July 22, 2005

Mike Gallagher
Department of Ecology
P.O. Box 47600
Olympia, WA, 98504-7600

Dear Mr. Gallagher:

The following comments are submitted on behalf of the Sierra Club Upper Columbia River Group (Sierra Club) regarding the Department of Ecology's draft rule to control Persistent Bioaccumulative Toxics (PBTs). We appreciate your dedication to identifying means through which to evaluate and phase-out PBTs in Washington, and thank you for the opportunity to comment on this rule.

Sierra Club members and the citizens of eastern Washington are concerned with the PBT problem. Several of the state's easternmost rivers have been found to contain dangerous levels of PBTs. In the Spokane River, PCBs, PBDEs, mercury and lead are significant problems. In the Columbia, mercury, PCBs and pesticides contaminate Lake Roosevelt. In the Pend Oreille, PCBs and Aldrin are present. In the Snake River, pesticides and PCBs have shown up in tissue samples, as they have in the Palouse River. This list could go on. All of these rivers receive significant recreational use. Essentially, we are facing a toxic crisis in eastern Washington rivers.

Given the number and severity of toxic chemicals present in our rivers, sediments and the tissues of aquatic creatures, the PBT Rule should take an aggressive, enforceable and responsible approach. Unfortunately, there appears to be nothing enforceable whatever about the draft PBT Rule. We do appreciate that the rule is bringing some focus to the problem, and it certainly has a several elements to recommend it. But it is disappointing that this rule will not directly result in a cleanup of a single PBT site, nor removal of dangerous chemicals from consumer and business use.

Sierra Club offer comments on the following aspects of the draft rule:

The draft PBT Rule lacks enforceability. If the goal "to reduce and eliminate the uses and releases of PBTs in Washington" is ever to be realized, some enforceable requirements are absolutely necessary. The draft PBT Rule creates a list of PBTs and provides recommendations, evaluations and information regarding measures to treat the PBT list, but fails to impose any new requirements or restrictions on persons using or releasing these dangerous chemicals. Even chemicals that are selected for Chemical Action Plans (CAPs) will not be treated with any mandatory provisions under the draft rule. The contents of a CAP as provided in the rule are limited to providing "analysis of information," "evaluation of potential impacts," and a "list of options" that includes a "no-action option." Without enforceable requirements, this rule lacks the ability to create significant change.

The decision to go forward with a procedural rule obviates the need for environmental and cost-benefit analysis as required for substantive rules under the state Administrative Procedures Act. The serious

environmental detriments and substantial economic benefits associated with cleanup of toxics speak to the need to conduct these types of analyses. The rule, or accompanying documents, should specifically indicate when this work will be done.

Pesticides and fertilizers should NOT be exempted from the rule. Pesticides and fertilizers are widely known to be dangerous PBTs, and they must be addressed as part of this PBT Rule. We find their current exemption unacceptable and ask that the Department of Ecology seek to remove the exemption in the 2006 legislative session.

Sensitive population groups and high-exposure populations should remain a factor to be considered when deciding whether to prepare a CAP. In section (3)(a)(iv) of WAC 173-333-410 (page 10 of draft PBT Rule), the (iv) has a strike-out through it, though the language explicating the factor remains. We assume that this factor remains a part of this section, as scientific evidence regarding the susceptibility of sensitive groups and high exposure populations is an essential consideration.

The CAPs fail to study and recommend safer alternatives to the harmful chemicals addressed. In the draft rule, CAPs are described as a document to provide recommendations on actions to phase-out uses or releases of PBTs. However, the CAPs will not examine and recommend safer substitutes to using the toxic chemicals. Seeking out safe and reliable alternatives is an effective means to reducing or eliminating the presence of these chemicals that should be included in the CAPs.

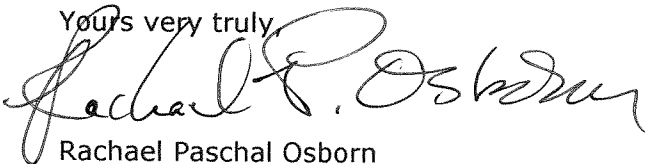
Each CAP should include a clear, detailed timeline for completion. In order to evaluate the progress of the CAPs and to ensure that goals are being met, each CAP should include a detailed timeline for completion, with the ultimate goal being to eliminate, not just reduce, the chemical.

The "no-action option" under the CAPs is inadequate. CAPs are created only for the chemicals that are determined to pose the most pressing threats to health and the environment. Thus, a "no-action option" as the first option available under a CAP jeopardizes the potential of this legislation. If it is decided that the "no-action option" will remain, it should be qualified such that it is only an option if the chemical does NOT pose a potential threat to health or the environment.

We would also like to commend you on some of the strong points we see in the draft rule. In particular, we are pleased to see the strong level of public involvement in this PBT reduction process. The rule provides appropriate opportunities for public involvement during decision-making processes for identifying PBTs and when preparing CAPs. Further, the rule duly aims to heighten public awareness on the problems associated with these toxic chemicals. In addition, we applaud the Department of Ecology's commitment to taking critical steps during CAP implementation, such as detailing how it will promote and assist voluntary actions, how it will inform and educate the affected public, and identifying potential funding sources.

Thank you for your consideration of Sierra Club Upper Columbia River Group's comments on this important matter.

Yours very truly,



Rachael Paschal Osborn
Spokane River Project Coordinator